

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED
11/18/2022
Clerk of the
Appellate Courts

**IN RE: AMENDMENT OF TENNESSEE SUPREME COURT
RULE 31(14)(g)**

No. ADM2022-01538

ORDER

On November 1, 2022, the Alternative Dispute Resolution Commission (“ADRC”) filed a petition asking this Court to consider adopting an amendment to Rule 31(14)(g) to increase the number of course hours from twelve to sixteen for family mediators who wish to obtain the Specifically Trained in Domestic Violence Issues designation.

The Court hereby publishes the ADRC’s petition for public comment and solicits written comments on the proposed amendment from judges, lawyers, bar associations, members of the public, and all interested parties. The deadline for submitting written comments is January 17, 2023. Written comments should reference the docket number above and may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James Hivner, Clerk
RE: Tennessee Supreme Court Rule 31(14)(g)
100 Supreme Court Building
401 7th Avenue North
Nashville, TN 37219-1407

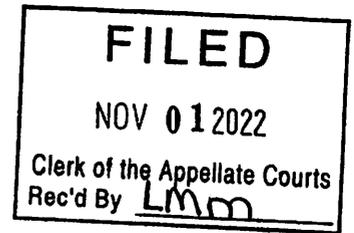
The Clerk shall provide a copy of this Order and Appendix to Lexis Nexis and to Thomson Reuters. In addition, this Order and Appendix shall be posted on the Tennessee Supreme Court’s website.

It is so ORDERED.

PER CURIAM

APPENDIX

**Petition of the Alternative Dispute Resolution Commission to
Amend Tennessee Supreme Court Rule 31(14)(g)**



IN THE SUPREME COURT OF TENNESSEE

IN RE:

PETITION FOR THE ADOPTION OF AMENDED
TENNESSEE SUPREME COURT RULE 31(14)(g),
UPDATED REQUIREMENTS TO CURRICULUM
FOR DOMESTIC VIOLENCE SPECIFICATION

No. ADM 2022-01538

**PETITION OF THE ALTERNATIVE DISPUTE RESOLUTION COMMISSION FOR
THE ADOPTION OF AMENDED TENNESSEE SUPREME COURT RULE 31(14)(g)**

The Alternative Dispute Resolution Commission (“ADRC” or “Commission”) respectfully petitions the Court to consider adopting an amendment to Rule 31(14)(g) to increase the number of course hours from twelve (12) to sixteen (16) hours for family mediators who wish to obtain the Specifically Trained in Domestic Violence Issues designation. The Commission met on October 18, 2022 and approved a revised curriculum which includes an increase in the number of hours from twelve (12) to sixteen (16) in order to obtain such designation. The supporting reasons for an increase of hours are set forth below.

Background

After completing the current twelve hour (12) domestic violence designation course, ADRC Commissioner Charles Hill concluded that the current course content did not effectively instruct family mediators on the differences in mediating cases where there had been a history of domestic abuse versus cases with no such history. Mr. Hill shared his conclusions with the ADRC and, along with fellow ADRC Commissioner Linda Seely, began gathering feedback and data points from trainers and other experts in family mediation to determine the best means of improving the certification requirements.

Consultation with experts and eight (8) of nine (9) current Tennessee ADRC approved domestic violence designation trainers led the subcommittee to the conclusion that the most effective way to improve the program is by expanding the training to encompass more of the

practical skills concerned in a mediation for a relationship where there had been a history of domestic abuse.

I. Current State of Tennessee Domestic Violence Designation Training.

Tennessee currently has nine (9) trainers with approved courses through which listed Rule 31 family mediators can obtain a designation denoting special training in issues relating to domestic violence. Pursuant to the language in Rule 31 Section 14(g), mediators obtain this certification through either a twelve hour (12) course administrated by one of the ADRC approved trainers and subsequently confirmed by the ADRC or by submitting to the ADRC verified proof of experience in issues relating to the mediation of family law cases with domestic violence where such experience is effectively equivalent to the twelve hour (12) course.

The existing content provides attendees with information on screening for domestic violence, court responses, barriers to prosecution, guardians ad *litem*, protective orders, and other areas, but is far too light on how to mediate when there has been domestic violence. ADRC commissioners consulted with eight (8) of the nine (9) existing trainers (the ninth is presumed inactive); two (2) applicants planning to apply as trainers, two (2) adjunct professors from Pepperdine's Straus Institute – Zena Zumeta and Dr. Cynthia Greer, who is also an instructor at Lipscomb's Institute for Conflict Management; Lucie Brackin, mediator and former president of the Memphis Bar; and others including a request for input from the membership of the Academy of Professional Family Mediators. Mr. Hill also reviewed the domestic violence training offered mediators in Michigan, Ohio, Maine, and Georgia. Through these consultations Mr. Hill and Ms. Seely developed an improved curriculum structure for the domestic violence training program which builds on the existing content while integrating and emphasizing specific external resources and practical skills which they believe will make family mediators who complete the training more effective in conducting mediation with clients who have had a history of domestic violence.

II. Introduction of New Content and Certification Course Organization.

The focus of expanding the training requirement from twelve (12) to sixteen (16) hours accommodates the introduction of several new sections to the course including: How Mediating Case With DV Issues Differs From Mediating Other Cases: What Mediator Should And Should Not Do Given The Differences; and Special Considerations For Drafting Safe, Effective Parenting Plans.

III. Technical Changes to Rule Language.

The purpose behind the ADRC's proposed change to Rule 31 is the expansion and improvement of the training provided to listed Rule 31 family mediators to allow them to better identify, interact with, and serve clients who may suffer in the mediation process as a result of physical, psychological, sexual, or economic abuse and coercion. Implementing the recommended expanded training content will necessitate expanding the number of hours in Rule 31(14)(g) from twelve (12) hours to sixteen (16) hours. Set forth below is the revised Rule 31(14)(g) which the Commission is asking the Court to approve.

Proposed Amendment to Tennessee Supreme Court Rule 31 Section 14(g):

(g) Procedure for Rule 31 Family Mediator's Additional Designation as "Specially Trained in Domestic Violence Issues." To obtain a designation as "Specially Trained in Domestic Violence Issues," the listed Rule 31 Family Mediator must have completed a sixteen-hour course on domestic violence issues approved by the procedures outlined in subsection (f) and shall provide to the ADRC proof of attendance at the approved course. The listed Rule 31 Family Mediator may request a waiver of course attendance based upon training and/or experience determined by the ADRC to be substantially equivalent to the sixteen hours of domestic violence topics approved by the ADRC.

The Commission has approved the revised curriculum. It adds new sections delineated above and specifically defines the learning objectives of each training section. For the Court's information, we have attached a copy of the revised curriculum as Exhibit 1.

The ADRC respectfully petitions this Court to adopt the amendment to Rule 31(14)(g) as proposed by the ADRC in this Petition.

Submitted this 1 day of Nov, 2022.

Respectfully,

X 
Stephen L. Shields, Esq.
Chairperson
DMS v. p.m. 312
032488

Specially Trained in Domestic Violence Issues

OBJECTIVES

The purpose of this course is to enable family mediators to understand and work effectively with the differences in mediating cases where some form of domestic abuse has occurred*. A combination of lecturattes, videos, role plays, case studies, reading assignments, small group exercises and discussion may be used to accomplish the following objectives:

- Mediators will become familiar with and learn to recognize several forms and patterns of domestic violence/abuse.
- During intake and throughout the mediation sessions, mediators will learn how to identify and screen for the dynamics of domestic abuse used for coercive control.
- The course discusses self-determination of the at-risk party and the at-risk-party's ability to negotiate for oneself, with a focus on ensuring the safety of all parties.
- Mediators will learn the differences in mediating cases where there has been abuse and the importance of maintaining balance and control in the mediation process.
- Rule 31's *Standards of Professional Conduct for Covered Neutrals* are reviewed as well as ethical dilemmas for mediators remaining impartial and the importance of confidentiality.
- The need for caution and special considerations in drafting Parenting Plans are explained.
- Mediators will learn best practices for safely terminating a mediation when it is determined that mediation is not appropriate.
- Mediators will be introduced to a variety of resources to assist their understanding of and ability to work with domestic abuse victims and perpetrators.

**Not intended for mediating cases where the primary subject of mediation is domestic violence or abuse. Domestic Abuse is Not Negotiable. Parties do not mediate abuse or the acceptability of abusive behavior; they mediate issues related to their divorce, their children, and future interactions between the parties.*

Curriculum Outline and Agenda

Hours	Topic	Concepts & Activities (<i>role play, video, case, reading, etc.</i>)
1.5	Definitions and forms of DV/Abuse	<i>Psychological, financial, and sexual as well as physical abuse. Profiles and vulnerabilities of victims and perpetrators. Recognizing signs and symptoms of abuse including coercive control.</i>
2	Mediation Intake Screening	<i>Screen for DV during every domestic mediation intake; screening methodologies and resources; community resources and the ethics of referrals; determining whether a case is appropriate for mediation.</i>
2.5	Safety Assessments/Safety Planning	<p><i>Continuously assess the presence of coercion during the mediation, and whether and when to switch to remote mediation</i></p> <ul style="list-style-type: none"> - Distribute and discuss: <i>The Mediator's Assessment of Safety Issues and Concerns (MASIC): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain</i>, Amy Holtzworth-Munroe, Connie J. A. Beck, and Amy G. Applegate, October 2010, Family Court Review 48(4):646-662¹ - Distribute and promote familiarity with the <i>Domestic Violence Interview Guide</i> from the 2013 Battered Women's Justice Project, U.S. Department of Justice² - Introduce the <i>Power and Control Wheel</i>, Developed by Domestic Abuse Intervention Project, Duluth, MN³ - Promote familiarity with resources available via the National Domestic Violence Hotline⁴ <p><i>Potential Mediation Safeguards: Structure (safety protocols, safe termination procedures, delays or check-ins before signing agreements); Support (involving attorneys/advocate/support persons, relevant resources, creating a signal to ensure the vulnerable party is able to reach out discreetly) Space (conducting mediation via shuttle/telephone/online, ensuring parties have</i></p>

¹ https://www.researchgate.net/publication/227667044_The_Mediator%27s_Assessment_of_Safety_Issues_and_Concerns_MASIC_A_Screening_Interview_for_Intimate_Partner_Violence_and_Abuse_Available_in_the_Public_Domain

² https://www.ncsc.org/___data/assets/pdf_file/0020/19109/domestic-violence-interview-guide-12232014.pdf

³ <https://www.theduluthmodel.org/wheels/>

⁴ <https://www.thehotline.org>

2	Maintaining Control of the Mediation	<p><i><u>The role of the mediator's judgment:</u> continually evaluate whether the case is appropriate for mediation and whether he or she has the skills to work with the parties effectively.</i></p> <p><i><u>Defining "self-determination":</u> awareness of precursors and signs that continuing or additional abuse could be imminent; managing aggressive negotiation techniques; establishing and enforcing roles and ground rules; holding space for a vulnerable party.</i></p> <p><i><u>Things to watch for:</u> participation/behavior, changes in body language, people talking around issues, making a lot of low blows, someone shutting down.</i></p> <p><i><u>Focus:</u> is a party focused on blame and shame? Is a party proposing ideas that exert control over the other person?</i></p> <p><i><u>Conversation dynamics:</u> are conversations occurring that make no sense? Are tensions escalating? Are parties agreeing to suggestions contrary to their own needs? Is one party making a series of demands and ultimatums? Is one party doing all the accommodating while the other keeps moving the goalpost? Is one person using leverage against the other?</i></p>
1	Concepts of and Techniques for Dealing with Anger	<ul style="list-style-type: none"> - "De-escalation Tips" – Crisis Prevention Institute - Video or role play if possible <p><i>Differences between anger and "power and control".</i></p> <p><i><u>Functions of anger:</u> anger as a strategy; anger as a reactive response; anger and negotiation; managing escalation and de-escalation; responding to anger.</i></p> <p><i>Understanding and navigating the Shame-Rage spiral.</i></p> <p><i>Acknowledging emotions: Looking underneath anger.</i></p>
2	Ethical Dilemmas Arising in Mediations with Domestic Violence Issues	<ul style="list-style-type: none"> - Review Rule 31 Appendix A "Standards of professional Conduct for Covered Neutrals" <p><i>To balance or not to balance the scale - if placing more than two fingers on the scale is required for the mediator to balance the power relationship, mediation is likely not appropriate.</i></p> <p><i>Confidentiality relating to child and spousal abuse.</i></p>

		<p><i>Mediating when no attorneys are involved.</i></p> <p><i>Mediating when only one party is represented.</i></p> <p><i>Self-determination and safety: when to intervene.</i></p>
1	<p>Special Considerations for Drafting Safe, Effective Parenting Plans</p>	<p><i>Understanding Parenting Plans as the nexus for parties' ongoing contact.</i></p> <p><i>Attention to details (frequency of contact between parents, drop-off/pick-up logistics, waiting times, methods and means of parents contacting one another, etc.).</i></p> <p><i>Including a "Plan B" for when "Plan A" doesn't work.</i></p> <p><i>Avoid vague, ambiguous, unenforceable language.</i></p> <p><i>Specifying topics for discussion and topics not for discussion during contact.</i></p> <p><i>Familiarity with and suggestions of different types of co-parenting tools; providing safe and effective ways for the parties to communicate to protect the DV victim.</i></p> <ul style="list-style-type: none"> - <i>Sample co-parenting tools: OurFamilyWizard, Coparently, Coparenter, other recommended by <u>Parents Magazine</u></i>
1	<p>How and When to Safely Terminate a Mediation Where DV Has Been Involved</p>	<p><i>Terminate from private caucus rather than a joint session.</i></p> <p><i>Refrain from blaming the victim in comments to the parties and notices to the Court.</i></p> <p><i>Refrain from disclosing DV where it was only disclosed by the victim.</i></p>

Works Cited and Additional Resources

List videos/role play scenarios/case studies/classroom readings/preferences

[TN Rule 31 Appendix A: “Standards for Professional Conduct for Covered Neutrals”](#)

[Divorce and Family Mediation - Folberg, Jay, A.L. Milne, P. Salem, eds. Book](#)

[Is Mediation Appropriate? Concerns and Recommendations - Mediate.com Article](#)

[Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions Article](#)

[The Mediator's Assessment of Safety Issues and Concerns \(MASIC\): A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain](#)

[Domestic Violence Interview Guide](#)

[The Power and Control Wheel](#)

[Michigan DV Screening Protocol for Mediators](#)

[Ohio Domestic Abuse and Mediation Training Program Standards](#)

[An Online Pre-Mediation Screening Tool - Resolutions Systems Institute](#)

[De-Escalation Tips - Crisis Prevention Institute](#)

[Intimate Partner Violence and Ethical Mediation - U of North Dakota](#)

[Addressing Domestic Violence in Mediation - Harvard](#)

[Stop Violence Against Women Mediation - Advocates for Human Rights](#)

[Domestic Abuse Screening - Stanford](#)

[Screening for DV in Mediation - Cook County, IL](#)

[Screening for DV - Maine](#)

[DV Screening for Non-English Speaking Women - EthnoMed](#)

[Online Dispute Resolution and Domestic Violence - Battered Women's Justice Project](#)

[Needs of DV Victims - Battered Women's Justice Project](#)

[Practice Guides for Family Court Decision Making in Domestic Abuse-Related Child Custody](#)

[National Coalition Against Domestic Violence TN Statistics](#)

[The National Domestic Violence Hotline](#)

[“It's Not Like I Hit Her” Video](#)

[Challenges within Family Mediation - Andrew Schepard Video](#)

[Coercive Control During Covid-19 - Battered Women's Justice Project Audio](#)

[“Is this Abuse?” - Metro Office of Family Safety Quiz](#)

[Co-Parenting App Tools Parents Magazine](#)